

Message Text

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INFO OCT-01 ISO-00 AF-08 ARA-06 EA-07 EUR-12 NEA-10 L-03

SP-02 USIA-06 AID-05 NSC-05 CIEP-01 TRSE-00 SS-15

STR-04 OMB-01 CEA-01 CIAE-00 COME-00 FRB-03 INR-07

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NEA/RA:DMORRISON (DRAFT)

STR:SLANDE (DRAFT)

EA/EP:RIMUS

CIEP:GKAMENS

TRSY:FMARESCA

COMMERCE:JSEVER (DRAFT)

AF/EPS:RDUNCAN

OPIC/D:JDILL

OPIC:CHUNT

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R 122009Z AUG 76

FM SECSTATE WASHDC

TO ALL DIPLOMATIC AND CONSULAR POSTS

AMCONSUL ASMARA BY POUCH

AMEMBASSY BEIRUT BY POUCH

USINT BAGHDAD BY POUCH

XMT AMCONSUL ASMARA

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INFORM CONSULS

E.O. 11652: N/A

TAGS: EINV

SUBJECT: REVIEW OF USG EXPROPRIATION POLICY

REFS: (A) STATE 81210, (B) STATE A-10523 (DECEMBER 28, 1973)

1. AS REPORTED REF A, THE CIEP INTERAGENCY STAFF COORDINATING GROUP ON EXPROPRIATION (EXPROPRIATION GROUP) HAS BEEN REVIEWING USG EXPROPRIATION POLICY WITH A VIEW TOWARD CLARIFYING CERTAIN ASPECTS OF IT AND IMPROVING ITS IMPLEMENTATION. REF A REPORTED THE RESULTS OF THIS REVIEW INsofar AS THEY RELATE TO THE POSITION OF THE USG CONCERNING VALUATION OF EXPROPRIATED PROPERTY. THE RESULTS OF OTHER ASPECTS OF THE REVIEW ARE SUMMARIZED BELOW FOR THE INFORMATION AND GUIDANCE OF ADDRESSEES IN HELPING TO CARRY OUT USG EXPROPRIATION POLICY.

2. THE EXPROPRIATION GROUP CONCLUDED THAT THE EXPROPRIATION PROBLEM CONTINUES TO BE AN EXTREMELY SERIOUS ONE, AND THAT THE 1972 PRESIDENTIAL STATEMENT ON "ECONOMIC ASSISTANCE AND INVESTMENT SECURITY IN DEVELOPING NATIONS" (TRANSMITTED TO ALL DIPLOMATIC POSTS AS AN ENCLOSURE TO REF B) REMAINS AN APPROPRIATE STATEMENT OF THE BASIC ELEMENTS OF OUR EXPROPRIATION POLICY.

3. IT WAS NOTED THAT THE CONGRESS HAS ACTED TO STRENGTHEN THE IMPLEMENTATION OF USG EXPROPRIATION POLICY BY ENACTING PROVISIONS IN THE TRADE ACT OF 1974 WHICH DENY PREFERENTIAL TREATMENT, GENERALLY AVAILABLE TO DEVELOPING COUNTRIES, TO THOSE COUNTRIES WHICH EXPROPRIATE U.S.-OWNED PROPERTY AND THEN DO NOT TAKE APPROPRIATE STEPS TO PAY COMPENSATION.

4. THE EXPROPRIATION GROUP WAS CONCERNED ABOUT THE MAJOR NATIONALIZATIONS OF THE PAST FEW YEARS WHICH HAVE LIMITED OFFICIAL USE

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GONE BEYOND TAKINGS OF A SINGLE FIRM TO EXPROPRIATION OF IMPORTANT SECTORS OF HOST COUNTRY ECONOMIES. WHILE RECOGNIZING THAT A MORE EFFECTIVE EXPROPRIATION POLICY WOULD NOT NECESSARILY REVERSE THESE TRENDS, IT MIGHT BE POSSIBLE IN CERTAIN CASES TO DETER EXPROPRIATION, LIMIT THEIR SCOPE, OR CONTRIBUTE TO FAIRER SETTLEMENTS.

5. THE GROUP IDENTIFIED A NUMBER OF SPECIFIC ACTIONS

WHICH CAN BE TAKEN AND APPROACHES WHICH CAN BE PURSUED
(ENUMERATED BELOW) FOR THE PURPOSE OF INCREASING THE
EFFECTIVENESS OF OUR EXPROPRIATION POLICY:

A. EXPANDING THE INVOLVEMENT OF THE INTERNATIONAL FINANCE
CORPORATION (IFC), A MEMBER OF THE WORLD BANK GROUP, IN
EQUITY INVESTMENTS. IN THE VIEW OF THE EXPROPRIATION
GROUP, AN EXPANDED ROLE FOR THE IFC IN DIRECT PRIVATE
FOREIGN INVESTMENT WOULD MAKE AN IMPORTANT CONTRIBUTION
TO INVESTMENT SECURITY. A PROPOSED INCREASE OF 540
MILLION DOLLARS IN THE CAPITALIZATION OF THE IFC HAS
BEEN APPROVED BY THE IFC BOARD AND HAS BEEN SUBMITTED
TO THE GOVERNORS FOR APPROVAL. WE HAVE SUBMITTED
LEGISLATION TO CONGRESS TO AUTHORIZE U.S. PARTICIPATION
IN THE CAPITAL INCREASE.

B. STRENGTHENING EXPROPRIATION INFORMATION-SHARING WITH
THE INTERNATIONAL FINANCIAL INSTITUTIONS THROUGH REGULAR
REPORTS TO U.S. EXECUTIVE DIRECTORS. THIS IS ALREADY
UNDERWAY. SUCH REPORTS TAKE INTO ACCOUNT THE WORK OF
THE EXPROPRIATION GROUP, INCLUDING ITS FINDINGS AND
DECISIONS ON PRESENT AND POTENTIAL EXPROPRIATORY
SITUATIONS.

C. SYSTEMATICALLY SEEKING TO INFORM BUSINESS OF USG
POLICIES AND PROCEDURES ON EXPROPRIATION ISSUES AND TO
ELICIT BUSINESS VIEWS. THIS, TOO, IS UNDERWAY, AND THE

AGENCIES REPRESENTED ON THE EXPROPRIATION GROUP ARE ALERT
TO THE NEED FOR THIS RECIPROCAL INFORMATION EFFORT, BOTH
IN THEIR INDIVIDUAL CONTACTS WITH BUSINESS AND IN THEIR
PROGRAMS FOR PUBLIC INFORMATION. (POSTS CAN MAKE
IMPORTANT CONTRIBUTIONS TO THIS EFFORT THROUGH THEIR
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CONTACTS WITH OVERSEAS REPRESENTATIVES OF U.S. BUSINESS.)

D. INSTITUTING REGULAR REPORTS BY OPIC TO THE EXPROPRIA-
TION GROUP REGARDING EXPROPRIATION ISSUES DISCUSSED IN
THE BERNE UNION. THIS STEP HAS BEEN TAKEN AND IS INTENDED
TO PROVIDE A BASIS FOR IDENTIFYING ISSUES
AND TAKING COOPERATIVE
ACTION WITH OTHER BERNE UNION MEMBERS.

E. SEEKING TO NEGOTIATE A JUDICIAL REMEDIES CONVENTION.
SUBSTANTIAL WORK HAS BEEN DONE IN DEVISING AN APPROACH
TO SEEKING INTERNATIONAL COOPERATION TO INCREASE THE
JUDICIAL REMEDIES AVAILABLE TO FORMER OWNERS OF EXPROPRI-
ATED PROPERTY WHO HAVE BEEN INADEQUATELY COMPENSATED.
WE INTEND TO CONSULT SHORTLY WITH A NUMBER OF COUNTRIES

TO DETERMINE THEIR WILLINGNESS TO ENTER INTO SUCH A CONVENTION.

F. DEVELOPING A MULTILATERAL INVESTMENT INSURANCE SCHEME. THERE IS AGREEMENT IN PRINCIPLE THAT A RENEWED EFFORT SHOULD BE MADE TO NEGOTIATE SUCH AN ARRANGEMENT, BUILDING ON THE WORK DONE IN A PREVIOUS UNSUCCESSFUL ATTEMPT TO DO SO UNDER THE AEGIS OF THE WORLD BANK (THE INTERNATIONAL INVESTMENT INSURANCE AGENCY, OR IIA PROPOSAL). THIS WAS SUPPORTED BY SECRETARY OF STATE KISSINGER IN HIS STATEMENT TO THE SEVENTH SPECIAL SESSION OF THE U.N. GENERAL ASSEMBLY ON INTERNATIONAL ECONOMIC ISSUES, AND IS CONSISTENT WITH THE PROPOSAL FOR AN INTERNATIONAL RESOURCE BANK MADE BY THE USG AT THE MEETING OF UNCTAD IN NAIROBI. AN INTER-AGENCY WORKING GROUP, CHAIRED BY OPIC, IS STUDYING THIS PROPOSAL AND WILL SUBMIT ITS RECOMMENDATIONS TO THE EXPROPRIATION GROUP.

6. POSTS WILL BE INFORMED OF DEVELOPMENTS BEARING UPON THE RECOMMENDATIONS DISCUSSED ABOVE AS THESE OCCUR. MORE BROADLY, THE EXPROPRIATION GROUP HAS AN ONGOING RESPONSIBILITY TO REVIEW THE EFFECTIVENESS OF USG EXPROPRIATION POLICY AND TO CONSIDER WAYS TO IMPROVE ITS IMPLEMENTATION, AND IT INTENDS TO CONTINUE TO DO SO WITH A VIEW TOWARD PROVIDING POSTS WITH APPROPRIATE GUIDANCE, BOTH GENERALLY AND IN PARTICULAR CASES, LIMITED OFFICIAL USE

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CALCULATED TO HELP ASSURE THAT U.S. OWNERS OF PROPERTY EXPROPRIATED OVERSEAS ARE TREATED FAIRLY AND THAT THE

DAMAGE DONE BY INVESTMENT DISPUTES AND EXPROPRIATIONS TO THE CLIMATE FOR INTERNATIONAL INVESTMENT IS MINIMIZED. KISSINGER

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